

THE HON'BLE SRI JUSTICE M.S. RAMACHANDRA RAO

CIVIL REVISION PETITION No.2808 of 2014

ORDER:

This Revision petition is filed under Article 227 of the Constitution of India, challenging the order dated 7.08.2014 passed in I.A.No.576 of 2014 in O.S.No.382 of 2012 by the Additional Senior Civil Judge, Tirupati.

2. The petitioner herein is defendant in the suit.

3. The respondent/plaintiff filed the above suit against the petitioner for recovery of amount basing on the promissory note.

4. A written statement was filed by the petitioner stating that she did not execute the promissory note; that she did not receive any money from the respondent; and that the suit promissory note is forged one. An additional and alternative plea was also taken by the petitioner that under threat some documents were taken away from the petitioner's house and on the basis of those documents the suit promissory note might have been created.

5. Issues were framed. Trial has been commenced. Evidence on the side of the plaintiff was over. The petitioner also went into witness box and deposed taking a stand that the said promissory note-Ex.A.1 is a forged document.

6. The petitioner filed I.A.No.576 of 2014 under Section 45 of the Indian Evidence Act, 1872 to send suit promissory note to a hand writing expert for comparison of signatures thereon. This application was opposed by the respondent on the ground that the Court itself can compare the signatures of the petitioner on the suit promissory note with the other admitted signatures and there was no necessity to send it to an expert.

7. By order dated 7.08.2014, the Court below dismissed the said I.A. observing that if the petitioner's case is that she did not execute Ex.A.1, there should be a specific averment in the petition that

Ex.A.1 is a forged document, and since the petitioner has stated in the affidavit filed in support of the I.A that it is necessary to ascertain whether Ex.A.1 bears her signature or the signatures thereon are forged, it shows that the petitioner is not certain of this plea.

8. In my considered opinion, this view of the Court below is perverse. There is a specific plea in the written statement as well as in the affidavit filed by the petitioner in support of I.A. that the suit promissory note is a forged one. Therefore, it is not proper for the Court below to say that the petitioner is not certain whether or not to raise the plea that the suit promissory note is forged one or not.

9. The other ground on which the Court below rejected the application is that the documents, to be sent to the expert for comparison with the said promissory note, have not been filed by the petitioner.

10. Learned counsel for the petitioner states that if the application is allowed, documents contemporaneous to the suit promissory note would be filed within one week before the Court below. Therefore, this reasoning of the Court below also cannot be sustained.

11. Lastly, the Court below held that the opinion of the expert is not substantive evidence and it is a weak piece of evidence and that the petitioner has not assigned any reasons to dispute her signature on Ex.A.1. No doubt, the evidence of an expert is not conclusive and it is to be considered by the Court below and decided in the suit. However, to say that the petitioner should assign reasons for disputing her signature on Ex.A.1-promissory note, in my opinion is perverse.

12. In **Janachaitanya Housing Ltd., v. Divya Financiers** ^[1]
a Division Bench of this Court held as under:

“No hard and fast rules can be laid down controlling the discretion of the Court to send the disputed documents/writings for the opinion of the expert or to examine him in support of such opinion. It observed also that on sending the document to hand writing expert and on

receiving report, parties, on showing sufficient cause, may call upon the Court to permit them to examine hand-writing expert or any witness in support or rebut the said opinion. No time could be fixed for filing applications under Section 45 of the Indian Evidence Act, 1872 for sending the disputed signature or writings to the handwriting expert for comparison and opinion and the same shall be left open to the discretion of the Court and for exercising such discretion when exigencies so demand, the Court shall take into account depending upon the facts and circumstances of each case.”

13. In view of the above legal position, the order passed by the Court below cannot be sustained and the same is liable to be set aside.

14. Accordingly, the Civil Revision Petition is allowed, and the order passed in I.A.No.576 of 2014 in O.S.No.382 of 2012 by the Additional Senior Civil Judge, Tirupati is set aside. The petitioner shall file document contemporaneous to Ex.A.1 containing her signature, before the Court below, within one week from the date of receipt of a copy of this order. In default, this Revision shall stand dismissed. There shall be no order as to costs. As a sequel, miscellaneous petitions, if any, shall stand closed.

M.S. RAMACHANDRA RAO,J.

22nd June, 2015
Js.

[\[1\]](#) 2008 (3) ALT 409 (A.P)